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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 United States of America,
10 Plaintiff,
11 v.
12 Ki Chong Yoo,
13 Defendant.
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Case No. 2:10-cr-203-JAD-GWF

**Order Denying Motion to
Withdraw Guilty Plea [Doc. 121]**

15 Defendant Ki Chong Yoo was indicted for conspiracy to kidnap and travel in interstate
16 commerce in aid of racketeering, one count of travel in interstate commerce in aid of racketeering,
17 and three counts of kidnapping. Docs. 1; 37. It is alleged that Yoo and two other individuals rang
18 the doorbell at a Las Vegas, Nevada home, entered the dwelling under false pretenses, and held its
19 occupants captive while demanding the passcode for a safe. *See* Doc. 37. An occupant escaped and
20 notified authorities, who arrested Yoo and his co-defendants after they fled the house. *See id.*

21 Yoo is a Korean national who does not read, write, speak, or comprehend English. On
22 November 13, 2012, Yoo executed a 10-page binding plea agreement whereby he agreed to plead
23 guilty to one count of conspiracy to travel in interstate commerce and one count of interstate travel
24 in aid of racketeering. Doc. 95 at 1. Both counts carry a penalty of up to 60 months in prison, and
25 the plea deal contemplates that the sentences on the two counts will run consecutively, for a total
26 term of imprisonment of ten years. *See id.* at 3, ¶ D.

27 On February 12, 2013, Yoo appeared before United States District Court Judge Gloria
28 Navarro with the aid of a certified interpreter and his attorney Chad Bowers, Esq., and entered his

1 guilty plea after an extensive plea canvas on the record. Doc. 128-1. Judge Navarro ascertained that
2 Yoo did not have the ability to comprehend the English language, but that a copy of the indictment
3 had been provided to him in Korean, and an interpreter was present during the plea discussions.
4 Doc. 127 at 3. After the Court found Yoo competent to enter a valid plea, the plea agreement was
5 summarized. *Id.* at 7-10. The summary conceded that the court had the power to reject the plea
6 agreement. *Id.* at 9. Yoo then told the judge that he had enough time to go over the charges to
7 which he intended to plead guilty, but he did express dissatisfaction with his counsel's
8 representation, because he disagreed with the amount of jail time he will be serving if the Court
9 accepts his binding plea agreement. *Id.* at 11-12. The Judge noted that the government did not have
10 to offer Yoo anything; reiterated that he has a right to trial, as well as the fact he would be waiving
11 that right by pleading guilty; informed him of the material consequences of being adjudicated a
12 felon; and confirmed that he knew that based on the plea agreement, he will be serving a sentence of
13 120 months, and be unable to appeal his sentence unless the judge sentences him to more than 120
14 months. *Id.* at 15-19, 21.

15 After extended colloquy, Yoo indicated that he was pleading guilty because he is in fact
16 guilty, that he had not been coerced, and that no other promises have been made in connection with
17 his decision to plead guilty. *Id.* at 21. Yoo confirmed that he knew what his options were; and then
18 the Court asked Yoo what he wanted to do. *See id.* at 15-16. Yoo chose to proceed with the plea
19 agreement and plead guilty. *Id.* at 17-18. At no point in the proceedings did Yoo state that he did
20 not understand either the indictment or the terms of the plea agreement, even after its terms were
21 summarized in open court. Doc. 128-1 at 7-11. In fact, after extensive discussion about Yoo's
22 options, the Court asked, "And so do you wish to go forward with the plea today or do you wish to
23 go to trial?" *Id.* at 17. Yoo replied, "I will follow the agreement." *Id.* The hearing transcript does
24 not reflect that Yoo was ever confused as a result of the Korean-English interpretation that occurred
25 during the February 12, 2013 hearing.

26 On March 8, 2013, Yoo submitted a letter to the Court and counsel requesting a written Korean
27 translation of his plea agreement. Doc. 106. On May 7, 2013, after Yoo received a written copy, he
28 personally filed a motion to withdraw his plea agreement claiming, without detail, that "the

1 translated copy of the plea agreement varies significantly from what the translator who accompanied
 2 defendant's counsel during the signing of the plea agreement translated to him." Doc. 111 at 1-2.¹
 3 In May 2013, Judge Navarro granted Mr. Bowers' motion to withdraw as Yoo's attorney; Chris
 4 Aaron, Esq. was appointed as his new counsel; and Mr. Aaron was advised to meet and confer with
 5 Mr. Bowers to evaluate whether a motion to withdraw the plea agreement remained necessary. Doc.
 6 114. This case was transferred to the undersigned on August 13, 2013. Doc. 118.

7 On November 21, 2013, Yoo—through attorney Aaron—moved once more to withdraw his
 8 guilty plea, re-asserting that his plea agreement was not properly translated into Korean and, as a
 9 result, he "did not understand the nature or gravity of the charges to which he pled nor the term of
 10 incarceration involved." Doc. 121 at 2. Yoo also contends that his counsel was ineffective in failing
 11 to procure another translation of the agreement and pressured him into signing it. *Id.* The motion
 12 also asks the Court to allow new counsel, Mr. Aaron, to withdraw as counsel. *Id.* at 3. The
 13 government opposes the motion, Doc. 128, arguing that the plea colloquy belies this story and that
 14 Yoo has provided nothing more than conclusory and unsubstantiated reasons why he should be
 15 permitted to withdraw his plea.

16 Having thoroughly reviewed the motion, the government's response, the plea agreement, and
 17 the transcript of the plea hearing, the Court finds Yoo's arguments unconvincing and starkly
 18 contradictory to his sworn testimony at his plea hearing. Although the Court finds that the record
 19 related to Yoo's plea is substantially detailed to permit the Court to rule on this motion without the
 20 benefit of a hearing and therefore vacates the portion of the January 23, 2014, hearing scheduled for
 21 discussion of the plea-withdrawal motion, the Court defers any ruling on the (very vague) request
 22 for Mr. Aaron's withdrawal as counsel until after a hearing to explore that issue with the benefit of
 23 details.

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28 ¹ Doc. 111 is not currently pending before the Court and its contents will not be discussed here. After
 both the hearing and after Doc. 111 was filed, Yoo was appointed new counsel. Doc. 115.

Discussion

A. Necessity of Hearing on the Plea-withdrawal Request

Yoo does not specifically request a hearing on the motion to withdraw his guilty plea. The Court originally set the motion for a hearing on January 8, 2014, Doc. 122, and then continued the hearing until January 23, 2014. Doc. 130. The first issue is whether an evidentiary hearing on the motion to withdraw the guilty plea remains necessary.

“Before the district court can engage in a measured exercise of discretion, it must conduct an inquiry adequate to create a sufficient basis for reaching an informed decision.” *United States v. Gonzalez*, 113 F.3d 1026, 1028 (9th Cir. 1997) (internal quotation omitted). The Ninth Circuit reviews a denial of an evidentiary hearing for abuse of discretion, and has found that no hearing need be provided on a motion to withdraw a guilty plea where the movant’s new allegations were answered “[i]n all significant respects” during prior proceedings. *United States v. Erlenborn*, 483 F.2d 165, 167 (9th Cir. 1973); *cf. United States v. Burrows*, 872 F.2d 915, 917 (9th Cir. 1989) (holding that, in ineffective assistance of counsel case, no evidentiary hearing need be provided where “the record conclusively shows that [the] trial attorney was not ineffective”). In other contexts, the Ninth Circuit has held that “[a]n evidentiary hearing . . . need be held only when the moving papers allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to conclude that contested issues of fact exist.” *United States v. McTiernan*, 695 F.3d 882, 891 (9th Cir. 2012) (considering motion to suppress). Moreover, the Court need not hold an evidentiary hearing where “[t]estimony from live witnesses would have been largely cumulative of evidence that the court had already received.” *United States v. Smith*, 155 F.3d 1051, 1063 n.18 (9th Cir. 1998) (request to review allegedly tainted evidence).²

Upon review of the record, the Court finds that a hearing on the motion to withdraw the plea is not necessary because Yoo's allegations were answered in all significant respects during the plea

² Where the court knows or has reason to know that the plea in question was part of a “package deal” involving several defendants, the Court should undertake a more exacting inquiry into whether the plea was knowing and voluntary, as there is a heightened probability of coercion in such instances. *See United States v. Caro*, 997 F.2d 657, 659 (9th Cir. 1993). Although Yoo, Lee, and Kim were charged with identical crimes in this case, there is no indication that Yoo’s plea was part of a “package deal.”

1 colloquy. The 28-page transcript of the plea hearing, containing his sworn statements made under
 2 oath and penalty of perjury, furnishes a full and complete record illustrating Yoo's beliefs, thoughts,
 3 and concerns on his negotiated sentence—the topic that Yoo asserts as the basis for his request to
 4 withdraw the plea, and Yoo offers nothing to suggest that a hearing will aid in the Court's
 5 disposition of the motion to withdraw the plea. Therefore, the Court vacates the portion of the
 6 January 23, 2014, hearing dedicated to the plea-withdraw request and resolves this motion via this
 7 written order.

8 **B. Motion to Withdraw the Guilty Plea**

9 A criminal defendant has no right to withdraw a guilty plea. *United States v. Rubalcaba*, 811
 10 F.2d 491, 493 (9th Cir. 1987). However, a district court may permit withdrawal of a guilty plea
 11 prior to sentencing upon a showing by the defendant of any "fair and just reason," a standard that is
 12 liberally applied. Fed. R. Crim. Proc. 11(d)(2); *United States v. Ortega-Asciano*, 376 F.3d 879, 883
 13 (9th Cir. 2004); *United States v. Nagra*, 147 F.3d 875, 880 (9th Cir. 1998). "Fair and just reasons for
 14 withdrawal include inadequate Rule 11 plea colloquies, newly discovered evidence, intervening
 15 circumstances, or any other reason for withdrawing the plea that did not exist when the defendant
 16 entered his plea." *Ortega-Asciano*, 376 F.3d at 883. The district court must vacate a guilty plea that
 17 was "unfairly obtained or given through ignorance, fear or inadvertence." *Rubalcaba*, 811 F.2d at
 18 493 (quoting *Kercheval v. United States*, 274 U.S. 220, 224 (1927)). The defendant has the burden
 19 of establishing a fair and just reason for withdrawal. *See* Rule 11(d)(2)(B).

20 When the record reflects that the defendant's plea was knowing and voluntary and made with
 21 full understanding that the court was not bound by any sentencing agreement, the district court does
 22 not abuse its discretion in refusing to allow withdrawal of the plea. *United States v. Garcia*, 909
 23 F.2d 1346, 1349 (9th Cir. 1990). "Statements made by a defendant during a guilty plea hearing
 24 carry a strong presumption of veracity in subsequent proceedings attacking the plea." *United States*
 25 *v. Ross*, 511 F.3d 1233, 1236 (9th Cir. 2008). Thus, the Court need not grant any request to
 26 withdraw when the reasons given contradict statements made during the plea colloquy. *United*
 27 *States v. Castello*, 724 F.2d 814, 815 (9th Cir. 1984). This allows the court to deny a request to
 28 withdraw when the defendant has simply changed his mind. *Garcia*, 909 F.2d at 1348.

1 Yoo claims “a misunderstanding regarding the translation of the Plea Agreement into the
2 Korean language resulting in a gross mischaracterization of his possible sentencing exposure”
3 caused him to enter into the plea agreement without understanding “the nature or gravity of the
4 charges to which he pled nor the term of incarceration involved.” Doc. 121 at 1-2. He also baldly
5 “insists that his previous attorney failed to procure another translation and pressured him into
6 signing.” *Id.* at 2. But the extensive discussions during the plea hearing belie these post hoc
7 allegations.

8 First, the bald claim that Yoo signed the plea agreement due to pressure by counsel is
9 contradicted by his sworn testimony during his plea hearing. Yoo acknowledged that no one had
10 “made any threats or promises to [him] or forced [him] to plead guilty.” Doc. 128-1 at 22, l.7-9.
11 When asked if he was pleading guilty “because of any coercion or fear of any co-defendants,” he
12 replied, “No, there’s nothing like that.” *Id.* at 22, l. 14-16. Moreover, it was clear during the
13 hearing that Yoo was unhappy with his lawyer because he thought he should have gotten him a
14 better sentencing deal. *Id.* at 12, l.7-15, l.17 (wherein Yoo explains that his dissatisfaction is due to
15 “the penalty” and his belief that he deserved more leniency than his co-defendants). The Court also
16 repeatedly advised Mr. Yoo that it was entirely his choice whether to accept the plea agreement or
17 go to trial and gave Mr. Yoo numerous chances to either “go forward with the plea agreement” or
18 “go to trial,” and Yoo concluded, “I will follow the agreement.” *Id.* at 17, l. 8. Thus, his belated and
19 nondescript post-plea allegation that his decision to enter a guilty plea had anything to do with
20 pressure from counsel is not credible.

21 Yoo’s contention that he did not realize the gravity of the plea agreement or his possible
22 sentencing exposure is even less credible. The plea agreement is a binding deal—not just on the
23 parties but on the Court. It calls for a ten-year sentence (two consecutive five-year sentences for the
24 two counts he is pleading to). If the Court rejects the agreement for the ten-year sentence, the
25 agreement is “null and void.” Doc. 95 at 2, ¶ C(3); Doc. 128-1 at 20-21. This ten-year sentence
26 term was repeatedly discussed—in numerous ways—throughout the plea colloquy. Doc. 128-1 at 9,
27 10, 11-14, 16, 18-19, 20-21. These discussions concluded with:
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1 The Court: . . . aside from the sentence of 120 months, has anyone made
 2 any other promises to you about your sentence?

3 Yoo: Uh, I don't understand.

4 The Court: All right. You will be sentenced to 120 months in prison. **Are**
 5 **there any other promises that have been made to you about**
 6 **what your sentence will be?**

7 Yoo: **No. As far as I know, it's 120 months.**

8 Doc. 128-1 at 22, l. 17-25 (emphasis added). Yoo then admitted the facts that support his plea. *Id.*
 9 at 23-25.

10 In light of the extensive discussion about the sentence in this binding plea agreement and
 11 Yoo's specific acknowledgment that it was 120 months, the Court does not find credible his claim
 12 that he was somehow unaware of the sentencing exposure when he entered his plea. A defendant
 13 must establish "a reasonable probability that, but for the [Rule 11] error, he would not have entered
 14 the [guilty] plea." *Ross*, 511 F.3d at 1236 (quoting *United States v. Dominguez Benitez*, 542 U.S. 74,
 15 76 (2004)). Other courts have applied this "but for" standard to withdrawals made on the basis of,
 16 *inter alia*, the court's failure to provide the defendant with a written translation of a plea agreement.
 17 See *In re Sealed Case*, 670 F.3d 1296, 1302-03 (9th Cir. 2011).³ Similar to *In re Sealed Case*, Yoo
 18 has not explicitly stated in his motion that "but for" alleged translation errors, he would not have
 19 pled guilty. The detailed discussions and canvassing at his plea hearing belie both the claim that he
 20 was operating under the belief that the plea agreement contained something other than a 120-month
 21 sentence and the notion that, had he been provided with some other translation, he would not have
 22 entered a guilty plea. The Court declines to credit the bald and unsubstantiated arguments contained
 23 in the motion over Yoo's prior sworn testimony. *Castello*, 724 F.2d at 815. Bereft of a "fair and
 24 just" reason to set aside his guilty plea and with its bald claims refuted by Yoo's sworn testimony at
 25 his plea hearing, Yoo's motion to withdraw must be denied.

26 ³ One outlying trial court case found that "an interpreter's oral description of the contents of a critical
 27 document [is] insufficient," and that defendants should be provided with translated copies of all documents
 28 introduced in their criminal case. *United States v. Mosquera*, 816 F. Supp. 168, 175 (E.D.N.Y 1993).
 29 However, *Mosquera* was a complex case involving 18 defendants, all of whom did not speak English and
 30 were represented by different counsel. It has since been widely distinguished, and found inapplicable to
 31 "relatively simple" factual scenarios, such as this one. See, e.g., *United States v. Martinez*, 120 F. Supp. 2d
 32 509, 514 (W.D. Pa. 2000).

Conclusion

2 **IT IS THEREFORE ORDERED** that the Order setting the request to withdraw the plea
3 hearing for January 23, 2014, Doc. 130, is VACATED only in part as to this specific portion of the
4 motion;

5 **IT IS FURTHER ORDERED** that Yoo's Motion to Withdraw Plea Agreement [Doc. 121] is
6 DENIED; the Court reserves decision on the request for withdrawal of counsel until after the
7 January 23, 2014, hearing.

8 || DATED: January 23, 2014.

JENNIFER A. DORSEY
UNITED STATES DISTRICT JUDGE